

even though no particular 50 shares had been identified as subject to the trust. Intangible things cannot be destroyed.

c) The effect of lack of certainty of intention

If there is no intention to create a trust (or power), the donee will take the property absolutely, as a gift. **LASSENC V TIERNEY (1849)**.

This rule **only** applied to **certainty of intention** and not to the insufficiency of other certainties.

CERTAINTY OF SUBJECT MATTER

There are two elements to certainty of subject matter:

- 1) It must be certain/clear what property is held on trust; and**
- 2) The beneficial interests must be clear/certain.**

1) It must be clear what property is held on trust:

The donor must make it clear what property is to be held on trust or the trust will be void as trustees, beneficiaries and the court will be unable to determine what is held on trust.

PALMER V SIMMONDS (1854) – The testatrix had left **‘the bulk of my said residuary estate’** to Thomas Harrison to hold on trust for various people. The meaning of residue was clear but it was unclear what the bulk of the residue meant. Bulk could mean anything, so trust was not established and it also had to be clear which property went to which beneficiary.

SPRANGE V BARNARD (1789) – In this case, there was no trust but an absolute gift.

RE GOLAY’S WILL TRUST (1965) – **‘reasonable income’** did not cause the trust to fail for uncertainty. It was held that the trust was sufficiently certain. This phrase also indicates an objective yardstick which the courts can apply.

Where the subject matter of the trust itself is uncertain then the trust will fail and there will be no trust created – it will create an absolute gift known as the rule in **PERCIVAL V WATSON**.

However, where the subject matter is certain, but the beneficial share in that property is not then the trust will fail and will be held on resulting trust for the settlor.

Future property: NORMAN V FEDERAL COMR OF TAXATION (1963) – ‘It is impossible for anyone to own something that does not exist, it is impossible for anyone to make a present gift of such a thing to another person.’

The type of property:

Certainty of subject matter can depend upon the type of property. This situation arises when there is an attempt to create a trust over part of a bulk of **tangible property**, e.g. furniture in a home. Where there is a trust of **part of a bulk of tangible property**, the trust property will only be certain if it has been separated from the rest. If it is not separated, then it is impossible to say what the subject matter of the trust is.

RE LONDON WINE CO (1986) – Buyers of wine stored in various warehouses could not establish a trust of particular bottles in their favour as the bottles had not been segregated or identified in any way. So, when the wine supplier went into liquidation, customers could not claim priority over other creditors by saying that particular bottles of wine were held on trust for them. **Tangible things can be exposed to legal problems.**

Where there is a trust of part of some **intangible property**, e.g. shares, there is no need to identify the specific shares to be held on trust. **HUNTER V MOSS (1994)**. If the shares were of different types or related to shares in different companies then the rule in Hunter v Moss **would not apply**, and the trust will be void if there is no further identification of the relevant property (**RE HARVARD SECURITIES LTD (1988)**).